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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/097,023

06/12/1998

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EXAMINER

MOULTON, ELIZABETH ROSE

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/097,023
Filing Date: June 12, 1998
Appellant(s): MCFADDEN ET AL.

David M Crompton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8 April 2008 appealing from the Office action mailed 29 July 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

In this application, an appeal brief was filed 16 May 2005. An examiner's answer was mailed 26 July 2005. The board rendered a decision affirming-in-part on 19 September 2007.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,702,373	Samson	12-1997
5,662,713	Anderson et al	9-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

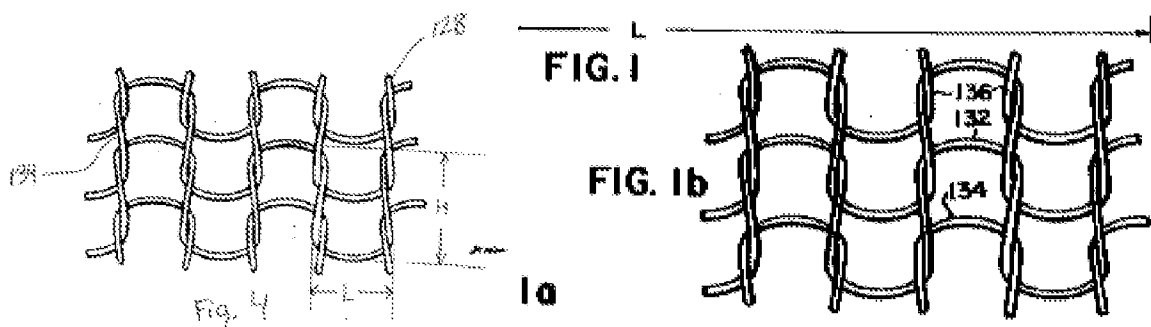
1. Claims 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samson (US 5,702,373) in view of Anderson et al (US 5,662,713)
2. Samson teaches a catheter (FIG 7) with stiffer proximal (242) and flexible distal (248) segments, the distal segment comprising a knit tubular member (244) with liner (250) wherein the proximal segment has an inner proximal liner (254), an outer liner (256) and a proximal braid or coil (246) between the inner and outer proximal liners.
3. Samson does not teach that the knit is made up of a single fiber. Anderson teaches a knit made of a single fiber (Abstract). The knit is not expandable when constrained by the catheter sheath (Fig 9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form a knit from a single strand as taught by Anderson. The knit would be non-expandable since it is constrained by the liner. Additionally, the applicant has not provided a reason for making the knit from a single strand. See specification at page 8 lines 3-16.

(10) Response to Argument

Appellant first argues (page 8) that Samson does not teach a knit as claimed. The examiner agrees that Samson does not teach a knit formed from a single strand. This is why the examiner relies on Anderson for teaching a knit formed from a single

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stand. Appellant turns to Anderson (page 9) where appellant contends that Anderson does not teach the braid as claimed. First, the examiner finds that Anderson's braid, shown in Fig 1b, for example, is clearly formed from a single strand (Anderson Abstract) and is formed of a plurality of up loops and a plurality of down loops (Fig 1b), wherein the up and down loops interlock (the loops are interwoven and cross). The interlock disclosed as being shown in Fig 4 of the specification. The "interlock" is nothing more than overlapping wires in the appellant's drawings. Compare appellant's Fig 4 (left) to Anderson Fig 1b (right):



The examiner finds that based on the drawings alone one of ordinary skill in the art would determine that Anderson's braid is equivalent to appellant's braid.

Appellant goes on to argue that Anderson's braid is radially expandable. The invention as a whole must be considered. As the examiner's has explained in the Advisory Action mailed 10 October 2008, the braid of Anderson would be constrained by the liner when used in the invention of Samson so it would not expand radially.

Appellant's final argument is that the examiner has not established a reason to combine the single strand of Anderson with the catheter braid of Samson. Looking at the prior art as a whole, Samson teaches every limitation of the claim except for a single

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stranded braid. Would it have been obvious to one of ordinary skill in the art at the time the invention was made to use a single strand braid as an alternative? Anderson teaches a single strand braid which is formed of the same material (Nitinol: Anderson abstract, Samson top of Col 8), intended for use in the body, and formed in the same way (on a mandrel: Anderson Fig 7-7f, Samson Col 15 line 59) as the braid of Samson. Appellant has not disclosed (or argued) that a single strand braid serves a stated purpose or solves a particular problem. The braids of Anderson and Samson both perform the same function: adding rigidity to a tubular structure. Therefore, the examiner finds that one of ordinary skill in the art would have a reasonable expectation of success in substituting the single strand braid of Anderson into the catheter of Samson.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/ELIZABETH R MOULTON/

Examiner, Art Unit 3767

Conferees:

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767

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/Janet C. Baxter/
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